

(2018) 10 PAT CK 0040

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 18659 of 2015

Shashi Dhar Jha @APPELLANT@Hash T. M. Bhagalpur University

Date of Decision : 25-10-2018

Acts Referred:

Citation : (2018) 10 PAT CK 0040

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner; State and T.M. Bhagalpur University (hereinafter referred to as the "University").

2. The petitioner has moved the Court for the following reliefs :

Relief(s)

(i) Issuance of an Order, Direction of a Writ in the nature of Mandamus commanding the authorities concerned of the Respondent University to fix all

the Pre and Post-retirement claims of the petitioner {a retired Class III Employee (Assistant) in J.P. College, Narayanpur, a constituent unit of T.M.

Bhagalpur University, Bhagalpur}, strictly in accordance with the law laid down by the Hon'ble High Court Patna by order dated 28th August,

2008 in CWJC No. 10870 of 2008 (In the Matter of Letter of Sunny Prakash Vs The State of Bihar & Ors), which has been affirmed by the Apex

Court by order dated January 18, 2013 passed in Civil Appeal No. 516 of 2013 (State of Bihar & Anr Vs Sunny Prakash & Ors.).

AND CONSEQUENT UPON SUCH DETERMINATION

(ii) A writ in the nature of mandamus may kindly be issued directing the Respondents concerned to ensure the payment of all consequential benefits,

that too, after supplying to the petitioner, the detailed statement of account of the petitioner's all the unpaid Pre and Post-retirement Claims.

(iii) To hold and declare that the action of the Respondent No. 5 in making fixation of petitioner's pension as a retired Class IV Employee of J.P.

College, Narayanpur, vide Ann-14 at Page No. 54, that too, in complete ignorance of petitioner's promotion as an Assistant in the College

vide Annexure-3 at page no. 22 to this writ petition (granted under the order of the then Vice-Chancellor of the Respondent University) is highly

illegal, arbitrary, malafide, malicious and unsustainable in the eye of law and on facts both and is fit to be deprecated by this Hon'ble Court in

strong words.

AND CONSEQUENT UPON SUCH

DETERMINATION

(iv) A writ in the nature of Certiorari may kindly be issued by this Hon'ble Court for quashing the Letter No. Acc/2740 dated 06.10.2015 (Ann-

14/page no. 54) by the Respondent no. 5, whereby even without asking for any show cause notice from the petitioner, the Respondent No. 5,

effectively has cancelled petitioner's promotion as an Assistant and upon treating the petitioner, as Retired Class IV Employee of J.P. College,

Narayanpur, has fixed petitioner's pension, in a complete illegal, arbitrary, malafide, malicious and unauthorized manner.

(v) Issuance of an Order, Direction or a Writ in the nature of Mandamus commanding the authorities concerned of the Respondent University for

making the payment of Penal Interest @ 12% per annum to the petitioner over the said claims, in addition to the payment of Statutory Interest @ of

5% per annum to the Petitioner over his claim of pension & Gratuity.

(vi) For grant of any other relief(s) to which the Petitioner may be found entitled to, in the facts and circumstances of this case.

3. The petitioner initially joined on a Class-IV post in J.P. College, Narayanpur on 04.02.1976, which was a constituent College of the University. By

order dated 11.10.1990, he was promoted on a Class-III post on which he continued drawing emoluments of a Class-III employee till his

superannuation on 31.05.2015 from the same College. Pursuant thereto, by order of the Finance Officer of the University dated 06.10.2015 his

pensionary benefits were sanctioned treating him to be a Class-IV employee. The

same led to filing of the present writ application.

4. Learned counsel for the petitioner submitted that during his entire service career, there was no objection from any quarter with regard to any

irregularity relating to promotion of the petitioner to a Class-III post in the year 1990 and only after more than four months of his superannuation, the

letter of the University sanctioning pensionary benefits refers him as a 4th Grade employee, which is patently illegal and unsustainable. It was

submitted that even till date, there has not been any communication by any authority of the University, much less any show cause or formal order

recalling the promotion granted on 11.10.1990.

5. On a specific query of the Court to learned counsel for the University as to whether there has been any formal show cause issued to the petitioner

or any order passed recalling the promotion and subsequent action taken by the University, the answer is a categorical 'no'. However, he submitted

that prior to the amendment brought in the Statute in the year 2014, there was no provision for promoting a Class-IV employee to Class-III post.

6. By way of reply, learned counsel for the petitioner submitted that much prior to the promotion given to the petitioner, there was no specific order of

the University providing for 20% of Class-III posts to be filled up by promotion from persons working on Class-IV posts.

7. In the aforesaid background, on the short point of there being no procedure prescribed in law having been followed by the University authorities of

changing the status/category of the petitioner at the time of his superannuation or even during the service period, inasmuch as having allowed him to

continue on a Class -III post right from 1990 till 2015 and till date not issuing either any show cause or passing any formal order recalling the

promotion given to him before taking action in accordance with law, in the considered opinion of the Court, it is too late in the day for the University

authorities to take recourse to or object to payment of pensionary benefits to the petitioner accepting him to have retired as a Class -III employee.

8. Accordingly, the writ petition stands allowed.

9. The University is directed to compute the pensionary benefits of the petitioner treating him to be a Class-III employee expeditiously and latest

within a period of four months from the date of production of a copy of this order before the respondent no. 4, as suggested by learned counsel for the

University.

10. The Court has further been persuaded to interfere in the matter primarily on the ground that no patent illegality or fraud or misrepresentation has

been attributed to such transaction and now the matter requires to be finally put to rest.

11. It goes without saying that in terms of the present order, the consequential benefits of grant of ACP etc. be also considered and appropriate orders

passed and payment found due be made within the same period.

12. If the University finds any benefit/amount inadmissible, details/ reasons be assigned for the same.